

LOBBYIST CONFLICTS OF INTEREST

In its 2007 general session, the Utah State Legislature enacted a statute prohibiting lobbyists from representing a client when the representation involves a conflict of interest (see Utah Code Annotated § 36-11-306 below).

The statute defines conflict of interest as: 1) a circumstance where the representation of one client will be directly adverse to the representation of another client **OR** 2) a circumstance where there is a significant risk that the representation of one or more clients will be materially limited by the lobbyist's responsibilities to another client or a personal interest of the lobbyist.

The statute provides an exception to the conflict of interest prohibition if: 1) the lobbyist reasonably believes that the lobbyist will be able to provide competent and diligent representation to each client, 2) the representation is not otherwise prohibited by law, 3) the representation does not require the lobbyist to assert a position on behalf of one client that is opposed to the position of another client represented by the lobbyist involving the same legislative issue, **AND** 4) each affected client gives informed consent to the conflict of interest in writing.

To promote compliance with this law, the Office of the Lieutenant Governor recommends that lobbyists who represent more than one client: 1) seek legal advice on this issue from an attorney licensed to practice law in Utah, 2) inform all clients of the "risk" conflict of interest defined in the statute at least annually or whenever engaging a new client, and 3) whenever an actual conflict of interest arises, immediately inform the affected clients.

The form on the next page may be useful to multi-client lobbyists for informing clients of the "risk" conflict of interest.

[Date]

[Client]

[Address]

[City, State, ZIP]

Dear [Client]:

Utah law prohibits me from representing a client when the representation involves a conflict of interest. Under the statutory definition, conflict of interest includes the risk that representing one client may be limited by my responsibilities to another client. Under certain circumstances, the statute allows you to permit me to continue representing you despite the risk that a conflict may arise with another of my clients.

Please find enclosed with this letter a copy of the conflict of interest statute and a list of the clients I currently represent. Even with the risk that a conflict of interest may occur among my clients, I believe that I am able to provide competent and diligent representation to you and my other clients. No other law prohibits me from representing you and my other clients. Presently, my representation of these clients does not require me to assert a position on your behalf that is opposed to the position of another client involving the same legislative issue.

If you consent to me continuing to represent you notwithstanding the risk that a conflict of interest may arise, please sign the statement below and return a copy of this letter to me. Thank you for your prompt attention to this matter

Sincerely,

[Lobbyist]

Enclosures

I acknowledge receipt of the above conflict of interest disclosure including a copy of Utah Code Annotated § 36-11-306 and [Lobbyist]'s client list. I give my informed consent that [Lobbyist] may continue to represent me despite the risk that a conflict of interest may arise between me and another of [his/hers/its] clients.

[Client]

Date

36-11-306. Conflicts of interest.

- (1) As used in this section, "conflict of interest" means a circumstance where:
 - (a) the representation of one principal or client will be directly adverse to another principal or client; or
 - (b) there is a significant risk that the representation of one or more principals or clients will be materially limited by the lobbyist's responsibilities to:
 - (i) another principal or client; or
 - (ii) a personal interest of the lobbyist.
- (2) Except as provided in Subsection (3), a lobbyist may not represent a principal or client if the representation involves a conflict of interest.
- (3) Notwithstanding the existence of a conflict of interest, a lobbyist may represent a principal or client if:
 - (a) the lobbyist reasonably believes that the lobbyist will be able to provide competent and diligent representation to each principal or client;
 - (b) the representation is not otherwise prohibited by law;
 - (c) the representation does not require the lobbyist to assert a position on behalf of one principal or client that is opposed to the position of another principal or client represented by the lobbyist involving the same legislative issue; and
 - (d) each affected principal or client gives informed consent to the conflict of interest in writing.